

STATE OF MICHIGAN
COURT OF APPEALS

WORLD SAVINGS BANK, FSB,

Plaintiff-Appellee,

v

EDWIN VICTOR NASSAR and ROSALINDA
JAYME,

Defendants-Appellants.

UNPUBLISHED
February 11, 2010

No. 288904
Wayne Circuit Court
LC No. 08-120022-CH

Before: Beckering, P.J., and Markey and Borrello, JJ.

PER CURIAM.

Defendants appeal as of right the circuit court's order vacating certain documents that defendants had recorded with the Wayne County Register of Deeds and enjoining defendants from filing or recording other documents related to the subject property. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

In January 2006, defendants obtained a loan from plaintiff in exchange for a mortgage on real property. Defendants defaulted on the loan. In April 2007, plaintiff obtained a sheriff's deed on mortgage sale for the property. Since July 2007, defendants have recorded approximately 13 documents relating to the property with the Wayne County Register of Deeds. The recorded documents include a quitclaim deed conveying the property from defendant Rosalinda Jayme to herself "for the sum of Five Hundred Thousand and 00/100 Dollars, pre 1933 gold and silver coin and other considerations," a UCC financing statement in which Jayme is listed as both the debtor and the secured party, and documents referencing a deed of trust and a substitution of trustee, as well as a notice of and certificate of reconveyance.

Plaintiff thereafter filed this circuit court action alleging claims for statutory slander of title and common-law slander of title, and requesting that defendants show cause why the recorded documents should not be vacated. Plaintiff also requested a permanent injunction enjoining defendants from filing additional frivolous documents concerning the property. On August 12, 2008, the circuit court ordered defendants to appear and show cause why the documents should not be set aside and vacated. After hearing the parties' arguments, the circuit court rejected defendants' contention that plaintiff's alleged failure to present the original promissory note had any significance to the action. The court determined that the filings were improper and ordered that they be vacated. The court also enjoined defendants from recording further documents concerning the property.

On appeal, defendants argue that both the circuit court and the district court in a prior landlord-tenant action disregarded defendants' "jurisdictional challenge" that plaintiff did not prove that it was the "real party in interest."

A challenge to a court's subject-matter jurisdiction presents a question of law that is reviewed de novo on appeal. *Polkton Twp v Pellegroni*, 265 Mich App 88, 98; 693 NW2d 170 (2005).

Defendants' claims of error involving the prior district court landlord-tenant action are not properly before this Court because this appeal is limited to plaintiff's circuit court action to clear title to its property.¹ Defendants may not now collaterally attack the orders in the prior district court case in this appeal from the separate circuit court action.

Contrary to defendants' assertion, the circuit court in this case did not disregard any jurisdictional challenge. Defendants never challenged the circuit court's jurisdiction below. Even on appeal, defendants do not offer any argument that is pertinent to analyzing the circuit court's jurisdiction. A circuit court's subject-matter jurisdiction is determined by the allegations in the complaint. *Trost v Buckstop Lure Co*, 249 Mich App 580, 586; 644 NW2d 54 (2002). A court has subject-matter jurisdiction if the matter is within the class of cases with regard to which the court has the power to act. *Id.* In general, "circuit courts are presumed to have subject-matter jurisdiction unless jurisdiction is expressly prohibited or given to another court by constitution or statute." *In re Petition by Wayne Co Treasurer for Foreclosure of Certain Lands for Unpaid Prop Taxes*, 265 Mich App 285, 291; 698 NW2d 879 (2005). Defendants do not present any basis for concluding that the present case is not within the class of cases with regard to which the circuit court is empowered to act. Defendants' bald assertion that the court lacked subject-matter jurisdiction is inadequate because they may not "simply . . . announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for [their] claims, or unravel and elaborate for [them their] arguments, and then search for authority either to sustain or reject [their] position." *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

Defendants' contention that the circuit court disregarded their assertion that plaintiff was not the "real party in interest" to the prior foreclosure action is misguided. Generally, an action must be prosecuted in the name of the real party in interest. MCR 2.201(B). "A real party in interest is one who is vested with the right of action on a given claim, although the beneficial interest may be in another." *Blue Cross & Blue Shield of Michigan v Eaton Rapids Community Hosp*, 221 Mich App 301, 311; 561 NW2d 488 (1997). Plaintiff, as the purchaser of the subject property pursuant to a sheriff's deed, was the "real party in interest" to bring this lawsuit to clear

¹ We note that defendants previously appealed the district court's decision to the circuit court, which resolved that appeal on April 30, 2008. Defendants thereafter filed a claim of appeal from the circuit court order with this Court, but the appeal was dismissed for lack of jurisdiction because an appeal by right cannot be filed from a judgment or order of the circuit court on appeal from a district court. MCR 7.203(A)(1)(a); *World Savings Bank FSB v Nassar*, unpublished order of the Court of Appeals, entered June 4, 2008 (Docket No. 285154).

title to the property. Purported defects in the proceedings that led up to the sheriff's deed are not material to plaintiff's standing to bring this action.

Defendants' second stated issue refers to the trial judge's admission that he did not read defendants' response before ruling on plaintiff's motion. However, defendants have abandoned that issue by failing to address it in the body of their brief. "It is axiomatic that where a party fails to brief the merits of an allegation of error, the issue is deemed abandoned by this Court." *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

The crux of defendants' second argument is that their right to procedural due process was violated because both the circuit court and the district court did not "hear issues . . . regarding the holder in due course to bring suit as the Real party in Interest." As previously indicated, matters related to the prior district court action are not properly before this Court in this appeal. With respect to the circuit court action, "the critical question for purposes of due process is whether an individual has been given a meaningful opportunity to be heard." *Republic Bank v Genesee Co Treasurer*, 471 Mich 732, 742; 690 NW2d 917 (2005) (quotation marks and citation omitted). The record reflects that the circuit court gave defendants ample opportunity to present their arguments at the hearing on plaintiff's motion, thereby satisfying their right to due process. Defendants do not explain in what way their right to be heard was limited or inadequate. The fact that the circuit court was not persuaded by defendants' arguments does not demonstrate that their right to due process was violated.

Affirmed. Plaintiff, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Jane M. Beckering

/s/ Jane E. Markey

/s/ Stephen L. Borrello